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**The challenges of free movement of persons  
in the Western Balkan context**

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# The challenges of free movement of persons in the Western Balkan context \*

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Dr Éva Lukács Gellérné \*\*

## Abstract:

Non-EU member Western Balkan countries aspire to join the EU which is a genuine condition hence they are surrounded by EU countries and they are dedicated to democratise within this framework. Free movement of persons is one of the most significant symbols of the EU which signals its integrity and unity. That is why opening the negotiation chapter on free movement marks a historic point in the accession process, too. The article sheds light on the general framework of negotiations and the general absorption capacity of Western Balkan states with a focus on labour market situation and push factors of migration. Also the state of affairs in the realm of legal and institutional approximation requirements is tackled upon, including issues of employment and social security. The article wishes to contribute to a better understanding of the underlying challenges in this field driven by the conviction that the historic window of opportunities is there for the region to advance on the European path marked by peace and progress.

## Keywords:

Western Balkan, free movement of persons, accession, employment, social security

## 1. Introduction

The EU has developed a policy aimed at supporting the gradual integration with the seven Western Balkan countries. On 1 July 2013, Croatia became Member State while Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Albania are official candidates. Accession negotiations have started and different chapters of relevant EU law have been opened with Montenegro and Serbia, including of Chapter 2 on the free movement of persons in case of Montenegro. Bosnia and Herzegovina (it submitted membership application in 2016) and Kosovo<sup>1</sup> are potential candidate countries. All in all it has to be emphasised already at the outset that, except Croatia that became Member State, negotiations are in early phase, and mostly rather general conclusions can be drawn regarding the implementation level of EU law in the Balkan aspirant countries. However, there are certain concrete things to signal which deserve attention. The general tendencies can be well depicted and some specificities are also worth mentioning.

## 2. The general process of implementing of EU law

As aspirant countries submit their application for EU membership they, at the same time, undertake the obligation to harmonise their laws with the *acquis communautaire*, including the rules on free

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<sup>1</sup> Kosovo has a Stabilisation and Association Agreement with the EU signed on 27 October 2015, in Strasbourg.

movement for workers. After having received the application, the European Council mandates the European Commission to begin the accession negotiations. Afterwards, the formal negotiation process starts with mapping the differences between the legislation of the respective parties.<sup>2</sup> Chapter 2 deals with free movement for workers.

In case of Montenegro, the accession negotiations were launched in June 2012, however Chapter 2 has only been opened during the tenth meeting of the Accession Conference on 11 December 2017.<sup>3</sup> In case of Serbia's accession, negotiations were launched in 2014, however, Chapter 2 has not yet been officially opened, though, the screening report is available since 2015.<sup>4</sup> During these negotiations it is aimed at examining the situation in the aspirant country (i) and to receive guarantees and commitment from the aspirant country regarding the amendment of the diverging laws to comply with EU law (ii). This applies equally to all fields of EU law.

During the legal approximation process preparations are continuously screened and assessed by the European Commission in the yearly evaluation reports.<sup>5</sup> In each field separate screening reports are launched (the Serbian screening report and the Montenegrin screening report on Chapter 2 – Freedom of movement for workers are officially available<sup>6</sup>).

Subsequently, the Commission presents its standpoint as regards compliance, possible adjustments or transitional arrangements. During these negotiations aspirant countries are given the opportunity to express their views on the transitional agreements, both in writing and in person.<sup>7</sup> Horizontally seen, not much is public of these talks. Also impact assessment can be prepared by the Commission if necessary to contribute to a Draft Common Position on a Chapter. Finally, the parties are required to reach a common position and approve the respective Chapter with common accord. The official closure of negotiations in every chapter is a prerequisite of launching the final stage of accession, namely to conclude the Act of Accession. Accession is an act of international law, the text of the Act of Accession has to be ratified by all Member States and by the aspirant country. These latter documents are already public.

It is to be stated already at this point that agreement on Chapter 2 is a serious precondition of accession. As Montenegrin Minister of European Affairs, Mr. Aleksandar Andrija Pejovic said at the above-mentioned Accession Conference, free movement „[...] represents the cornerstone of European integration. This chapter is of special importance to Montenegrin citizens, because on the day of EU

<sup>2</sup> See on accessions in general: [https://europa.rs/images/publikacije/07-35\\_Steps\\_Toward\\_EU.pdf](https://europa.rs/images/publikacije/07-35_Steps_Toward_EU.pdf) (Downloaded 3 March 2018).

<sup>3</sup> <http://www.consilium.europa.eu/en/press/press-releases/2017/12/11/tenth-meeting-of-the-accession-conference-with-montenegro-at-ministerial-level/> (Downloaded 3 March 2018).

<sup>4</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening\\_report\\_ch\\_2\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_2_serbia.pdf)

<sup>5</sup> Reports are accessible: [https://ec.europa.eu/neighbourhood-enlargement/countries/package\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/package_en)

<sup>6</sup> MD 2203/13 – 15.11.2013.

<sup>7</sup> See in detail Éva Lukács Gellérné, 'Free Movement of Persons – a Synthesis' in Réka Somssich and Tamás Szabados (eds.), *Central and Eastern European Countries After and Before the Accession, Volume I*. (Department of Private International Law and European Economic Law, Faculty of Law, ELTE University 2011), 51–84.

*accession they will have the right to stay, professionally develop and work in another Member State and have the same treatment as domestic workers in terms of working conditions and social and tax privileges.*"<sup>8</sup> Johannes Hahn, European Commissioner (DG NEAR<sup>9</sup>) made it clear that the opening of the chapter was, however, also a result of „[...] *positive developments in the field of public administration and economic and fiscal reform*".<sup>10</sup> Consequently, free movement is part of a wider approach, its success is highly dependent upon the general economic and fiscal characteristics of the aspirant countries.

European Commission President Jean-Claude Juncker announced in September 2017<sup>11</sup> that his staff was planning a strategy for Serbia and Montenegro to join the EU perspective by 2025, which strategy was adopted on 8 February 2018.<sup>12</sup> Based on this strategy accession can become soon a reality. Important is that a merit-based prospect of EU membership for the Western Balkans has been endorsed.

### 3. Free movement of Persons – Chapter 2

The *acquis* on free movement for workers enables EU citizens and their family members to work freely and on the basis of equal treatment in another Member State. EU migrant workers must be given the same advantages as to national workers when it comes to employment, working conditions, social and tax advantages, housing, collective rights.<sup>13</sup> The *acquis* also includes a mechanism to coordinate national social security provisions (social security coordination). Finally, migrant EU citizens have residence rights and right to have their diplomas recognised. EU rules aim at facilitating free movement by abolishing legal and institutional obstacles between Member States.

In the accession process not only the compliance with the above-mentioned areas and concrete, related provisions of the *acquis* is relevant, but also safeguarding mutual benefits and maintaining the ability of the aspirant country to cope with competitive pressure in general. Readiness to apply the rules depends not only upon the level of legal approximation but also on the general surroundings and implementing capacity in the aspirant state, be it economic, fiscal or political.

### 4. General requirements related to free movement for workers

The main target objective of the screening and adjustment process is to judge the overall absorption and innovation capacity of the aspirant country. A balance of rights and obligations is targeted, taking into account several general factors. In the field of free movement of persons these factors are: general economic performance and labour market (i), level of push factors (like wage differences) and anticipated volume of migration (ii). These are the vital areas which are put under scrutiny, and the level of adherence largely affects whether progress can horizontally be noted.

<sup>8</sup> <http://www.gov.me/en/News/179448/Montenegro-opens-Chapters-2-and-3.html> Download 3 March 2018.

<sup>9</sup> European Commissioner for Neighbourhood Policy and Enlargement Negotiations.

<sup>10</sup> <http://www.gov.me/en/News/179448/Montenegro-opens-Chapters-2-and-3.html> Download 3 March 2018.

<sup>11</sup> [https://ec.europa.eu/commission/sites/beta-political/files/roadmap-soteu-factsheet\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/roadmap-soteu-factsheet_en.pdf)

<sup>12</sup> COM(2018) 65 final: A credible enlargement perspective for and enhanced EU engagement with the Western Balkans.

<sup>13</sup> Article 45 TFEU and Regulation 492/2011/EU on freedom of movement for workers within the Union (ELI: <http://data.europa.eu/eli/reg/2011/492/oj> ).

#### 4.1. General economic performance and situation on the labour market

A short and non-exhaustive benchmarking of data might sensitise the overall economic situation in the region. On the basis of the 2016 country reports<sup>14</sup> the following data is presented: GDP per capita as % of the EU28 average in purchase-parity-standard (PPS), employment activity rate, unemployment rate and gender situation within the labour market. Montenegro and Serbia are examined in detail.

In *Montenegro*, the gross domestic product per capita (% of EU28 in PPS) in 2015 amounted to 41%. The working population (15–64) *activity rate* is 12 percentage points lower than the average in the EU, but it has increased over the past five years from 57.3 % in 2011 to 62.6 % in 2015, and to 63.6 % in the first half of 2016. *Unemployment* is still relatively high everywhere. In Montenegro it declined modestly, from 19.7% in 2011 down to 17.7 % in June 2016.<sup>15</sup> The unemployment and participation rates of women are lower in these countries. It is to be noted that these countries face a *gender imbalance* in their labour market. In Montenegro unemployment and participation rates of women (17.3 % and 56.6%) remain lower than for men (18.0 % and 70.6 %).<sup>16</sup> The informal economy's size was estimated at 24.5% of GDP.<sup>17</sup>

In *Serbia*, the gross domestic product per capita (% of EU28 in PPS) in 2015 amounted to 36 %. The employment rate reached 68.1% in 2015, while unemployment rate fell to 17.7 %. Labour market indicators improved further in 2016, to a large extent driven by rising informal, in particular agricultural, employment.<sup>18</sup> Problematic is however, that unemployment is still particularly high among young people — around 40 % of youth has no job. Women's position in the labour market is characterised by significantly lower activity and employment rates compared to men (56 % versus 72%). The informal economy was estimated at around 20–30 % of GDP.<sup>19</sup>

In *Macedonia* informal economy is estimated at 20–40 % of GDP.<sup>20</sup> The employment rate has increased to 52 % in 2015.<sup>21</sup> The gender gap remained existing, with women less likely to be in employment (42 %) than men (62 %). The unemployment rate remained persistently high, in particular for long-term unemployed and young workers, 24 %.

In *Bosnia-and-Herzegovina* the informal economy is estimated at 30–50 % of GDP.<sup>22</sup> Registered unemployment rate decreased from 43.6 % in 2014 to 42.9 % in 2015, but is still extremely high, one of the highest in Europe. Activity and employment rates remained at low level of 44.1 %.<sup>23</sup> Youth

<sup>14</sup> Brussels, 9.11.2016, SWD(2016) 360 final (2016 report on Montenegro), SWD(2016) 361 final (2016 report on Serbia), SWD(2016) 362 final (2016 report on the former Yugoslav Republic of Macedonia), SWD(2016) 363 final (2016 report on Kosovo), SWD(2016) 364 final (2016 report on Albania) and SWD(2016) 365 final (report on Bosnia-Herzegovina).

<sup>15</sup> SWD(2016) 360 final, page 27.

<sup>16</sup> SWD(2016) 360 final, page 27.

<sup>17</sup> SWD(2016) 360 final, page 26.

<sup>18</sup> SWD(2016) 361 final, page 29.

<sup>19</sup> SWD(2016) 361 final, page 28.

<sup>20</sup> SWD(2016) 362 final, page 27.

<sup>21</sup> SWD(2016) 362 final, page 27.

<sup>22</sup> SWD(2016) 365 final, page 34.

<sup>23</sup> SWD(2016) 365 final, page 36.

unemployment amounted to 62.3% in 2015. Additionally, there are large differences between female and male participation rates (32.1 % and 54.9 % in 2016).

In Kosovo the labour participation rate was extremely low in 2015: 37.6%.<sup>24</sup> Unemployment amounted to 32.9 %. The labour market outcomes for women were particularly weak, only 18.1 % of women were active. The share of unskilled workers among the total unemployed (57.1 %) and high youth unemployment (57.7 %) demonstrate necessity of strong state intervention in training and education. Informal economy is estimated high, albeit no concrete numbers are given in the reports.

Regarding the general economic situation, low labour market participation, high unemployment and gender imbalances pose challenges in the whole region, however, the scale is very divergent country by country. The informal economy is estimated between 20–30% in Montenegro and Serbia while to 20–40% in Macedonia and 30–50 % in Bosnia-and-Herzegovina (similar could be Kosovo but no data is given in the report). It leads to losses of budget revenue, lack of labour protection, and contributes to large social contributions on legal jobs. The latter impedes job creation and fuels labour market duality, again, the scale is decisive here.

It is important to note that employment activity rate and unemployment rate are indicators that are always put under a test. With accession these are not taken as solved or the optimum reached, Member States are constantly working on bettering their indicators, fine-tuning their support mechanisms. During the preparatory phase of accession indicators can only increase or decrease to a certain level, hard work shall be anticipated afterwards as well.

#### 4.2. Level of push factors and anticipated level of migration

The 2016 report on Serbia explicitly stresses that „[b]rain drain remains a major challenge”,<sup>25</sup> especially that „[m]ore than 85 % of all unemployed have a medium or high level of education, pointing to considerable gaps between acquired skills and labour market demand”. In order to enhance matches between demand and supply, the reformation of the training system and the strengthening of competences of the national employment system are suggested.

Clearly, low employment rate and high unemployment rate, coupled with considerable shadow economy result in lack of labour protection which are per se push factors.

The strongest push factor, obviously, is created by wage differences. The following tables show the net monthly average wage in some European countries, focusing on traditional host countries like the United Kingdom and Germany.

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<sup>24</sup> SWD(2016) 363 final, page 39.

<sup>25</sup> SWD(2016) 361 final, page 30.



Source: [https://en.wikipedia.org/wiki/List\\_of\\_European\\_countries\\_by\\_average\\_wage](https://en.wikipedia.org/wiki/List_of_European_countries_by_average_wage)

The difference is striking and not only for Montenegro and Serbia, but for Hungary and Croatia as well. General bottlenecks are common in the region: lack of qualified and experienced workforce (specialist doctors, nurses, graduated civil engineers), lack of workers in accommodation and food service, lack of skilled workforce during touristic season and general shortage in the building industry (bricklayer,



carpenter).<sup>26</sup> Brain drain is a challenge, which will not be solved by accession but will long persist even if accession becomes a reality.

Anticipated level of migration is a term that tries to describe general tendencies of immigration and emigration. In Serbia, the report of the Commissariat for Refugees and Migration of the Republic of Serbia entitled “Migration Profile of the Republic of Serbia for 2014” paints Serbia as both migration and emigration country. According to the Profile data, Serbian diaspora numbers approximately 4 million people in the region and the world.<sup>27</sup> There are also predictions stating that by 2050 Serbia will be losing 30,000 people per year due to migration, caused by the turbulent social, political and war-related events that took place in the region during the last two decades.<sup>28</sup> The UN migration country profile is in line with this by stating that by 2050 the Serbian population will be 7 million (now 9 million).<sup>29</sup>

In Montenegro population will decline from 620.000 to 560.000.<sup>30</sup> Incoming migration is rather limited (20.000 work permits have been issued in 2015).<sup>31</sup> The trend is decrease like in all the neighbouring countries. In Hungary for example, the same prediction states a decline of approx. 1 million from 9.8 million now to 8.9 million by 2050,<sup>32</sup> Croatia from 4.2 to 3,6 million by 2050.<sup>33</sup>

## 5. Existence of EU-law conform legal and institutional framework

In addition to general trends also adherence to the concrete legal and institutional requirements is examined in detail in the accession process. These are non-discrimination in accessing the labour market and labour rights, functionality of the EURES system, social security coordination and the usage of the European Health Insurance Card.

In case of all the Western Balkan countries (Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Albania as official candidates, Bosnia and Herzegovina and Kosovo as potential candidates) the European Commission prepares a yearly report on their capacity to cope with EU requirements. The series of 2016 reports point out progress in the level of preparations in all these countries (2017 reports are not yet available). Readiness reached a level sufficient to open Chapter 2 only in case of Montenegro. In a way, Montenegro is the current front-runner in negotiations. Also the

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<sup>26</sup> [www.ec.europa.eu/social/BlobServlet?docId=12650&langId=en](http://www.ec.europa.eu/social/BlobServlet?docId=12650&langId=en) (for Croatia) and [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/13a\\_hungary\\_labour\\_shortages\\_study\\_en\\_may\\_2015.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/13a_hungary_labour_shortages_study_en_may_2015.pdf) (for Hungary)

<sup>27</sup> See Migracioni profil Republike Srbije za 2012. godinu, [http://www.kirs.gov.rs/docs/migracije/Migracioni\\_profil\\_Republike\\_Srbije\\_za\\_2012.pdf](http://www.kirs.gov.rs/docs/migracije/Migracioni_profil_Republike_Srbije_za_2012.pdf) cited by <https://serbia.iom.int/sites/default/files/publications/documents/Migration%20studies%20in%20Serbian%20universities%20curricula.pdf> (page 7).

<sup>28</sup> Ibid, page 6.

<sup>29</sup> <https://esa.un.org/migmgprofiles/indicators/files/Serbia.pdf>

<sup>30</sup> <https://esa.un.org/migmgprofiles/indicators/files/Montenegro.pdf>

<sup>31</sup> <http://wb-mignet.org/wp-content/uploads/2016/04/prez-golubovic.pdf>

<sup>32</sup> <https://esa.un.org/migmgprofiles/indicators/files/Hungary.pdf>

<sup>33</sup> <https://esa.un.org/migmgprofiles/indicators/files/Croatia.pdf>

European Parliament's resolution<sup>34</sup> welcomed „[...] the continued progress in Montenegro's EU integration; [...] the fact that Montenegro has achieved steady progress in the accession negotiations”.

### 5.1. Situation in Montenegro

In Montenegro the law on foreigners was amended in March 2016 with a view to entirely lift restrictions on access to the labour market of EU nationals. This has been the result of a gradual liberalisation, starting in 2013.<sup>35</sup> Montenegro has not waited until the date of accession and undertook liberalisation upfront. However, as statistics show, non-EU nationals are there in highest numbers at the Montenegrin labour market. The following table shows nationals with work permits in 2012/2013.

	2012	2013
Serbia	8846	3261
Bosnia and Herzegovina	4420	1869
Russian Federation	2993	1194
Macedonia	1485	537
Kosovo	639	307
Croatia	323	127

Source: <https://www.eu.me/mn/2/02-prezentacije-s-bilateralnog-skrininga?download=514:employment-and-work-of-foreigners-in-montenegro>

Regarding equal treatment in labour law, the Montenegrin Labour Code was in line with the prohibition of discrimination already in 2013. Similarly, the institutional changes induced by the EURES were in place, the Employment Agency of Montenegro was designated to fulfil the tasks.<sup>36</sup>

In the field of coordination of social security systems, Montenegro has a bilateral agreement on social security with 19 EU Member States while negotiations with Romania were ongoing at the time of preparing the 2016 yearly report.<sup>37</sup> The existence of bilateral agreements is very important, because both the personal and the material scope of these agreements correlates with EU rules. Consequently, when applying these bilateral agreements, the Montenegrin social security institutions in principle apply

<sup>34</sup> <https://europeanwesternbalkans.com/2017/03/17/european-parliament-resolution-on-the-2016-commission-report-on-montenegro/> Download 21 February 2018.

<sup>35</sup> Screening report of Montenegro, pages 2–3.

<sup>36</sup> Ibid, page 4.

<sup>37</sup> Ibid, page 4.

EU principles like aggregation or export of benefits. With regard to the area of health insurance, the law on health insurance adopted in December 2015 recognised the European Health Insurance Card in the country.<sup>38</sup> It has been a great step forward, because it means that EU citizens and their family members, if needing medically necessary treatment in Montenegro, enjoy the extraterritorial social protection granted them by EU social security coordination. The 2013 Screening Report already stated that Montenegro has reached a satisfactory level of alignment in the field of free movement for workers.<sup>39</sup>

Finally, Montenegro joined the NATO alliance as 29th member state on 5 June 2017.<sup>40</sup> The EU is more of an economic and political union without a harmonised security policy. That is why it is of outstanding importance that an aspirant country joins the defence alliance of NATO where EU countries also summon. Hungary, for example joined the NATO in 1999 and the EU in 2004 (together with Poland and the Czech Republic).

## 5.2. Situation in Serbia

In case of Serbia, the screening report was adopted in September 2015.<sup>41</sup> At the time of the screening EU nationals and non-EU nationals were required to obtain a work permit to enter the Serbia labour market, and according to the 2016 country report liberalisation is still ahead.<sup>42</sup> New laws lifting the authorisation scheme for EU nationals and their family members are tabled to enter into force upon the date of accession. Foreigners on the Serbian labour market are overwhelmingly from Romania, other Western Balkan countries and Russia. Legally employed foreign workers have equal employment rights with domestic workers, Serbian labour law prohibits direct and indirect discrimination based on characteristics generally applicable in non-discrimination laws.<sup>43</sup>

The National Employment Service (NES) of Serbia is organised through a Central Office and 24 branch offices. It has 2.000 employees in total. In the 2015 screening report Serbia indicated that the NES did not expect difficulties in setting up and functioning of the EURES. Development of a national database/portal on job vacancies and job seekers started in January 2013.<sup>44</sup> However, according to the 2016 report<sup>45</sup> no new initiatives have been launched on EURES.

As regards coordination of social security systems, Serbia has bilateral social security agreements with 28 countries of which 19 are EU Member States. The bilateral agreement with Hungary entered into force in December 2014. The preparation of new agreements with the Russian Federation, Australia and Romania were well advanced. Electronic exchange of social security data has been operational with all

<sup>38</sup> SWD(2016) 360 final, page 32.

<sup>39</sup> Ibid, page 5.

<sup>40</sup> [https://www.nato.int/cps/su/natohq/topics\\_49736.htm](https://www.nato.int/cps/su/natohq/topics_49736.htm) The instrument for its accession to the Washington Treaty (or the North Atlantic Treaty) was formally deposited with the US State Department.

<sup>41</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening\\_report\\_ch\\_2\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_2_serbia.pdf)

<sup>42</sup> Serbia, 2016 Report, page 35, point 5.2.

<sup>43</sup> In respect of sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial status, membership in political organisations, trade unions or any other personal quality.

<sup>44</sup> Serbia, screening report 2015, page 4.

<sup>45</sup> SWD(2016) 361 final, page 35.

countries in the region, except Bosnia and Herzegovina. These agreements are of utmost importance, too, to give the Serbian authorities the chance to apply provisions almost identical to EU law. The project of the European Health Insurance Card has not yet been launched. According to the report, the capacity of social security institutions needs further strengthening to sufficiently address issues of adequacy, targeting and coverage.

Unlike other Western Balkan partners (e.g. Macedonia and Bosnia and Herzegovina), Serbia does not wish to join the NATO.<sup>46</sup> Only Albania (joined in 2009) and Montenegro (2017) are members of NATO.

In case of Macedonia and Albania, the 2016 reports note some progress in light of preparations being only at an early stage.<sup>47</sup> Macedonia should continue adapting the legal framework in line with EU *acquis* on access to the labour market, in particular as regards non-discrimination on grounds of nationality against EU workers. Albania should go on concluding social security agreements with EU Member States.

It is worth referring to language requirements in general. It is to be traced in the Montenegrin and the Serbian screening reports, and also former screening reports could be recalled here, that linguistic knowledge as conditions of employment is usually interpreted relatively broadly in EU aspirant countries. Regarding Serbia, ability to speak the language is a requirement for entering employment relation in pre-school facilities, primary and secondary schools, as well as when working in a healthcare facility.<sup>48</sup> In Montenegro there were also restrictions linked to educational institutions and health care activities. According to EU law the principles of proportionality and necessity govern language requirements, namely that the level of knowledge should be measurable to the post and be applied in a proportionate and non-discriminatory manner.<sup>49</sup> Language is a historic and cultural thing, countries need to safeguard their own mother tongue but they are, at the same time also required to provide for opportunities for other union nationals. This will be an important step forward on the European path already feeding the vision of European Union citizenship.

## 6. Some concluding thoughts

Except Croatia that became Member State, negotiations of free movement of workers are in early phase with the Western Balkan countries. Chapter 2 on free movement of persons has only been opened with Montenegro on 11 December 2017. Serbia's screening report was adopted in September 2015, but also the other aspirant countries made progress in their labour markets to approach EU standards and trends. Jean-Claude Juncker announced in his 2017 State of the Union speech that the European future of this region is a geostrategic investment in a stable, strong and united Europe based on common values. As a follow-up of the speech, the European Commission adopted a strategy on 6 February 2018.<sup>50</sup> According to the strategy, if conditions are fulfilled, based on a best case scenario, Montenegro

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<sup>46</sup> [https://www.nato.int/cps/ua/natohq/topics\\_50100.htm](https://www.nato.int/cps/ua/natohq/topics_50100.htm)

<sup>47</sup> SWD(2016) 362 final, page 34 for Macedonia.

<sup>48</sup> Serbia, Screening report 2015, page 3.

<sup>49</sup> C-379/87 (Anita Groener), ECLI:EU:C:1989:599.

<sup>50</sup> COM(2018) 65 final: A credible enlargement perspective for and enhanced EU engagement with the Western Balkans.

and Serbia might perspectively join the EU in 2025, bringing the opportunity within tangible reach for them. Other Western Balkan countries still need to boost their efforts and follow the remaining milestones to advance on their European paths.

This is an absolute political necessity to integrate these countries into the EU. If we take a look at Europe's map, we see that Western Balkan is completely surrounded by EU states. Exactly this is the introductory sentence of the strategy: „[...] *the six Western Balkans partners are a part of Europe, geographically surrounded by EU Member States.*” It is true that the EU has long been strongly engaged in the region, EU companies are the biggest investors in the Western Balkans and the EU has helped the countries to achieve overall political, economic reforms with improved democratic processes and to overcome the migration crisis. However, the accession perspective must remain credible and guarantee that it is a real merit-based process fully dependent on the objective progress achieved by each country. Of course, Western Balkan states must also remain determined to join and – as the strategy stresses – accession „[...] *is a generational choice, based on fundamental values, which each country must embrace more actively, from their foreign and regional policies right down to what children are taught at school.*” These countries need to overcome the devastating legacy of war and conflict, help the handling of war crimes cases and build-up good cooperation with the neighbours in order to open a historic window of opportunity for young generations. And the EU should be capable of preventing that disputes that are resolved do not flare up again once the countries are inside the EU.<sup>51</sup>

At the level of free movement of workers, two layers could be analysed, the state of affairs regarding general economic situation and the concrete *acquis* on free movement of persons. The general economic situation is characterised by challenges in labour market participation and gender imbalances and by a rather considerable informal economy. However, important is that trends are promising in terms of gradually increasing activity rates and decreasing unemployment rates. Activation measures on the labour market and alignment of demand with education could further improve the labour market situation. Additionally, regarding free movement, population movements will hit these countries to a large extent before and after the enlargement. The magnitude of population change differs but the decline is a common denominator in the region based on the predictions of the UN. It is equally valid also in the vicinity (like Hungary, Croatia). The decrease will be the result of not only emigration but natural decrease, too. Under these circumstances it is crucial to maintain balance of the population with enhanced measures, in particular in the field of education, employment and social protection with a special focus on family support schemes.

On the level of adherence to the *acquis*, negotiations – if any – are in early phase. Montenegro and Serbia have started the legal and institutional approximation process, they can report of a certain level of development. Until now Western Balkan countries had not spelled out any kind of derogations, they signalled their adherence to the basic principles of EU law. As far as we know about Montenegro and Serbia, these countries have introduced or undertook to take liberal measures regarding access to their labour markets, consequently, no derogations are awaited on their sides. The EURES network will be in

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<sup>51</sup> See for more: <http://www.biepag.eu/2018/02/11/the-new-eu-strategy-for-the-western-balkans-whats-in-store-for-bilateral-disputes/>

place upon accession and the practice gained from application of bilateral social security agreements with EU countries will genuinely contribute to the development of administrative capacities. Montenegro already applies the European Health Insurance Card which has been a great step forward.

Last but not least, strengthening the administrative capacity for ensuring the application of the *acquis* and raising awareness about EU rules in general remains a substantial challenge for all the respective countries.<sup>52</sup>

Finally, I would like to finish my contribution with a quote from Estonian Minister of European Affairs, Sven Mikser – said at the 10th Accession Conference with Montenegro –, which I wholeheartedly endorse: „[...] *the policy of enlargement [...] has the true power to bring about changes in the lives of citizens and to continue to represent a strategic investment in the peace and progress of the whole of Europe*”.<sup>53</sup>

## References

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<sup>52</sup> Administrative capacity is an important issue for also Montenegro: <http://poslodavci.org/en/news/mef-in-public-debate-montenegro-and-eu-free-movement-of-workers/> (Downloaded 10 March 2018).

<sup>53</sup> <http://www.gov.me/en/News/179448/Montenegro-opens-Chapters-2-and-3.html> Download 3 March 2018.

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